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10/774,616

02/10/2004

Howard Jason Harrison

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EXAMINER

LE, TAN

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte HOWARD JASON HARRISON and
DANA ALISON HARRISON

Appeal 2009-009153
Application 10/774,616
Technology Center 3600

Before WILLIAM F. PATE III, STEVEN D.A. McCARTHY and
KEN B. BARRETT, *Administrative Patent Judges*.

McCARTHY, *Administrative Patent Judge*.

DECISION ON APPEAL¹

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

1 The Appellants appeal the Examiner's final decision rejecting claims
2 1, 2, 6-8 and 12 under 35 U.S.C. § 134. More specifically, the Examiner
3 rejects claims 1, 2, 6-8 and 12 under 35 U.S.C. § 102(b) as being anticipated
4 by Aloisi (US 6,309,016 B1, issued Oct. 30, 2001). We have jurisdiction
5 over the appeal under 35 U.S.C. § 6(b).

6 We REVERSE.

7 The claimed subject matter relates to an eye glass holder in the figure
8 of a toy or doll. (Abstract and fig. 1).

9 Claims 1 and 7 are independent claims. Claim 1 recites:

10 1. A doll figure comprising:

11 (a) arms or appendages attached to a body or
12 torso, wherein the arms or appendages form a
13 horizontal position relative to the ground, and
14 wherein the arms or appendages together with the
15 body or torso are sized to accommodate a pair of a
16 person['s or child['s eyeglasses so that the
17 eyeglasses contact each of the arms or appendages
18 and the arms or appendages together with the body
19 or torso form a holding device for receiving the
20 pair of eyeglasses; and

21 (b) a support structure for holding the doll
22 figure in an upright position, wherein the doll
23 figure is capable of securely holding a pair of
24 eyeglasses.

25
26 Claim 7 recites a figure including a holding device for receiving a pair
27 of a person's or a child's eyeglasses, wherein the eyeglasses contact the
28 device at least at the part of the eyeglass frame around or near the lens, and
29 wherein the moveable arms or appendages together with a body or torso of
30 the figure are sized to accommodate a pair of eyeglasses so that the
31 eyeglasses contact each of the arms or appendages.

1 The Examiner misconstrues the limitation “sized to accommodated
2 [sic] a pair of a person[']s or child[']s eyeglasses so that the eyeglasses
3 contact each of the arms or appendages” as not being structural limitation.
4 (Ans. 5). The size of the figure, even if described in terms of a pair of
5 eyeglasses, limits the structure of the figure. The Examiner does not appear
6 to find that Aloisi describes a figure sized to accommodate a pair of a
7 person’s or child’s eyeglasses so that the eyeglasses contact each of the arms
8 or appendages. (See Ans. 3-4 and 7).

9 Aloisi describes various furniture pieces representing a three
10 dimensional representation of a figure, e.g. a person, to hold and organize
11 objects. (Aloisi, col. 1, ll. 43-53; and see fig. 2). The Appellants point out
12 that Aloisi describes “furniture pieces that hold lamps and books (Fig. 2),
13 potted plants (Fig. 4), and diaper bags (Fig. 6). The embodiment of Fig. 8 of
14 Aloisi depicts the horizontal arms (835a and 835b) where element (820) is
15 the seat of a chair.” (App. Br. 9). The Appellants’ “specification refer[s] to
16 particular sizes of eyeglasses at paragraph [0008]. There is nothing in this
17 description that would lead one to reasonably conclude that the invention
18 encompasses a figure the size of a chair as in the furniture of Aloisi's Fig. 8,
19 for example.” (App. Br. 10). As such the Appellants are correct when they
20 contend that “[i]t is unreasonable for anyone to conclude that such an
21 arrangement of the arm elements can accommodate a pair of eyeglasses so
22 that the eyeglasses contact each arm.” (App. Br. 9).

23 We do not sustain the rejections of claims 1 and 7 under § 102(b) as
24 being anticipated by Aloisi. Consequently, we also do not sustain the
25 rejections of dependent claims 2, 6, 8 and 12 under § 102(b) as being
26 anticipated by Aloisi.

DECISION

We REVERSE the Examiner's decision rejecting claims 1, 2, 6-8 and
12.

REVERSED

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